111 FERC ¶ 61,223
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

May 13, 2005

In Reply Refer To:
Northern Natural Gas Company
Docket No. RP05-271-000

Northern Natural Gas Company
1111 South 103rd Street
Omaha, NE 68124-1000

Attention: Mary Kay Miller, Vice President
Regulatory and Government Affairs

Reference: Revisions to List of Permissible Discounts

Dear Ladies and Gentlemen:

1. On April 14, 2005, Northern Natural Gas Company (Northern) filed a Tenth Revised Sheet No. 303 to its FERC Gas Tariff, Fifth Revised Volume No. 1, to revise its list of permissible discounts listed in section 54(B) of its General Terms and Conditions (GT&C). Northern proposes two specific tariff modifications. First, Northern's currently effective section 54(B)(8) provides that Northern may offer discounts "based on published index prices for specific receipt or delivery points or other agreed-upon pricing reference points for price determination." Northern proposes to revise this section to allow it to offer discounts "based on *a formula including, but not limited to*, published index prices for specific receipt or delivery points." Northern makes this revision to clarify that formula-type rate discounts other than index-based discounts are permissible.

2. Northern also proposes a new section 54(B)(9) to its list of permissible discounts, establishing a form of discount that provides for increasing (or decreasing) a rate for service under one rate schedule to make up for a decrease (or increase) in the maximum rate for a separate service provided under another rate schedule. Northern states that this new discount category generally will apply when Northern and a shipper execute several types of discount agreements with terms that could possibly span a time period during which the maximum tariff rate may change. Northern clarifies that, for both its proposed changes, the discounted rate must lie between the maximum and the minimum rate applicable to the service provided. Northern proposes its tariff sheet become effective May 15, 2005.

3. The Commission noticed Northern's filing on April 20, 2005, allowing for protests to be filed as provided by section 154.210 of the Commission's regulations. Pursuant to Rule 214, 18 C.F.R. § 385.214 (2004), all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties. Northern Municipal Distributors Group and Midwest Region Gas Task Force (NMDG/MRGTF) filed a protest, which we discuss below. Northern filed an answer to this protest. Generally, the Commission does not permit answers to protests (see 18 C.F.R. §385.213 (2004)). However, the Commission will accept Northern's answer in order to fully consider the proposal.

4. We accept Northern's Tenth Revised Sheet No. 303 effective May 15, 2005, as proposed. Northern's proposal conforms to Commission policy and benefits shippers by increasing contractual flexibility.

5. In its protest, NMDG/MRGTF raises two concerns. First, NMDG/MRGTF asserts that Northern's proposed revision to section 54(B)(8) is too broad. According to NMDG/MRGTF, the Commission requires that all discount agreements incorporate the same rate design as the pipeline's tariff rates. However, NMDG/MRGTF asserts that under Northern's proposal to incorporate formulas as permissible discounts, the phrase "but not limited to" could conceivably apply to discount agreements that do not use the same rate design and is, therefore, too broad and not consistent with Commission orders. NMDG/MRGTF requests the Commission direct Northern to revise section 54(B)(8) to clarify that it will base any discount on the same rate design as the schedule under which it is granted. In its answer, Northern contends that NMDG/MRGTF's suggested clarification is unnecessary because Northern's existing section 54(B)(8) already contains language ensuring that discounts are based on the same rate design.

6. Second, NMDG/MRGTF requests the Commission to direct Northern to revise section 54(B)(8) to only provide for discounts that fluctuate based on changes in inflation. NMDG/MRGTF contends that Northern made the instant filing in response to its complaint proceeding in Docket No. RP03-604-000, *et al.*, where the Commission investigated certain non-conforming service agreements between Northern and two shippers – Cottage Grove, L.P., and Whitewater Limited Partnership. Certain agreements contained rate provisions that provided for an inflation adjustment. In *LSP-Cottage Grove, L.P., and LSP- Whitewater Limited Partnership v. Northern Natural Gas Company*,[1] the Commission found the inflation adjustment provision to be a permissible material deviation. The Commission added that Northern may file to include an inflation adjustment discount in its list of permissible discounts so it will not have to file any agreement containing this type of discount as non-conforming. NMDG/MRGTF asserts

[1] 109 FERC ¶ 61,390 at P 50 (2004).

that the Commission did not invite Northern to make a blanket filing to permit it to use any formula in discount agreements, but rather suggested that Northern file to include inflation adjustments as permissible discounts. In its answer, Northern asserts that NMDG/MRGTF provides no support for its request to limit Northern's proposed formula discounts to only those containing inflation adjustments. Northern adds that incorporating such restriction would be unduly limiting and would require a tariff filing anytime Northern contemplates a new discount formula.

7. We reject NMDG/MRGTF's protest on both issues. As Northern asserts, section 54(B)(8) of its GT&C already contains language requiring all formula and price index discounts conform to the same rate design as the underlying rate schedule. In its Order on Remand[2] issued on December 18, 2003, in Docket No. RP00-152-002, the Commission directed Northern to incorporate language into its list of permissible discounts to ensure that all such discount agreements use the same rate design as the pipeline's tariff. To do so, the Commission directed Northern to provide that, for any discounts involving basis differentials, Northern must identify what rate component (*i.e.*, reservation charge or usage charge or both) is discounted, and must provide that, to the extent the firm reservation charge is discounted, the basis differential rate formula will produce a rate per unit of contract demand. Northern filed to incorporate this language into section 54(B)(8) of its GT&C, which the Commission approved in a letter order issued on March 25, 2004, in Docket No. RP00-152-003.[3] As a result, since Northern's tariff already requires any formula discount to use the same rate design as the pipeline's tariff, no further tariff changes are necessary.

8. Further, we will not direct Northern to revise its proposal to limit formula discounts to only those that fluctuate based on changes in inflation. The Commission does not limit the types of formulas that may be included in discount agreements as long as they use the same rate design as the pipeline's tariff and the discounted rate remains

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[2] 105 FERC ¶ 61,299(2003).

[3] 106 FERC ¶ 61,282 (2004).

within the minimum and maximum tariff rate. We find Northern's proposed revisions to section 54(B)(8) of its GT&C to be consistent with the Commission's policy of allowing formula-based discounts.

By direction of the Commission.

Magalie R. Salas,
Secretary.

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